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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

Judge Robert J. Miller

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CONSOLIDATED RAIL CORPORATION
a/k/a CONRAIL,

Defendant and
Third Party Plaintiff,

vs.

PENN CENTRAL CORPORATION, et al.,

Third Party Defendants.

CASE NO.:

S90-00056

The deposition of FRANK LENOX

Date: Thursday, December 3, 1992

Time: 1:00 o'clock p.m.

Place: 205 West Jefferson Boulevard
South Bend, Indiana

Called as a witness by the Plaintiff
in accordance with the Federal Rules of Civil
Procedure, pursuant to agreement as to date,
time and place.

Before Teresa L. Gemmel
Notary Public, State of Indiana

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2 U.S. Environmental Protection Agency
3 Office of Regional Counsel
4 Region 5, CS-3T
5 77 West Jackson Boulevard
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7 For the Plaintiff;

8 MR. JAMES A. ERMILIO
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11 1550 M. Street, N.W.
12 Washington, D.C. 20005

13 For the Defendant and Third Party Plaintiff;

14 MR. PIERCE E. CUNNINGHAM
15 Frost & Jacobs
16 2500 Central Trust Center
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18 Cincinnati, OH 45202

19 For the Third Party Defendant.

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THE DEPOSITION OF

FRANK LENOX

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1 FRANK LENOX,
2 called as a witness by the Plaintiff, being
3 first duly sworn, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. LINDLAND:

7 Q Would you please state your full name for the
8 record?

9 A Frank Linellsworth Lenox.

10 Q And what is your address, Mr. Lenox?

11 A (b) (6)

12 Q And your phone number?

13 A (b) (6)

14 Q See, my name is Kurt Lindland as I indicated. I'm
15 an attorney with the United States Environmental
16 Protection Agency. I'm representing the agency in
17 the action for which we are here today.

18 Are you familiar with the -- of the oath that
19 you just took?

20 A Yes.

21 Q Do you recognize that oath as binding on you today
22 as it would be in a court of law?

23 A Yes.

24 Q If there's a question that I ask that you don't
25 understand, just say you don't understand it, and I

1 can rephrase it for you. If there's -- if there's
2 an objection by someone in the room, you should
3 still answer the question unless your attorney says
4 otherwise.

5 If you need to leave, of course, just
6 indicate that; and we can make an arrangement for
7 that.

8 Have you -- have you ever been deposed
9 before?

10 A It's been a long time. I can barely remember it.

11 Q Approximately how long ago was that?

12 A Oh, I would guess 30 or 35 years probably.

13 Q Do you remember the nature of the action or why you
14 were deposed?

15 A It was over an accident that was -- in, I think, a
16 personal injury thing.

17 Q Was this at Conrail or was this?

18 A No, no.

19 Q An automobile accident or something?

20 A (No audible response.)

21 Q Have you ever testified at trial before?

22 A Yeah.

23 Q Was that with respect to the same --

24 A Same.

25 Q (Continuing) -- same incident?

1 A Yeah.

2 Q Was that here in South Bend?

3 A No, it was in Niles.

4 Q Did you speak with anyone about your deposition

5 today?

6 A No, just small talk. Just ask where it was and,

7 you know.

8 Q Who did you speak with?

9 A My supervisor, Betty Birr.

10 Q Did you talk about the substance of what would

11 be --

12 A No.

13 Q (Continuing) -- discussed in any way?

14 Did you review any documents in preparation

15 for your deposition today?

16 A No.

17 Q Did you make any notes, write any letters or

18 memorandum?

19 A No.

20 Q Did you bring with you any documents today?

21 A No.

22 Q Did your attorneys review your files at Conrail?

23 A Did my attorney what?

24 Q Review your files at Conrail for this deposition?

25 A With me you mean?

1 Q With you or without you?

2 A No.

3 Q If you know?

4 A Not as far as I know, no.

5 Q Okay.

6 If you could please state in summary form
7 your educational background beginning with high
8 school.

9 A High school and military schools while I was in the
10 military.

11 Q Okay. What year did you graduate from high school?

12 A 1952.

13 Q And what high school was that?

14 A Buchanan High School, Buchanan, Michigan.

15 Q Did you attend a school after that?

16 A No.

17 Q You mentioned military school. What year was that
18 in?

19 A I was in the Signal Corp in the army, just what
20 schooling I had from that.

21 Q What year was that in?

22 A '54.

23 Q Did you attend any other schools while you were in
24 the Signal Corp?

25 A No, just refresher courses on equipment and stuff

1 like that. Nothing specific, you know, as far as
2 the school.

3 Q Okay. You're talking about a communication
4 equipment?

5 A Communications, yes.

6 Q Okay. Did you attend any schools after you were in
7 the Signal Corp?

8 A No.

9 Q Have you attended any training seminars or any sort
10 of trainings?

11 A For Conrail we have training seminars.

12 Q And what kind of training seminars are those?

13 A Oh, mostly on labor management and hazardous
14 materials, that sort of thing pertaining to our
15 job.

16 Q What was the first training that you attended for
17 Conrail? Do you remember the year?

18 A Seems to me like it was maybe ten years ago, but I
19 can't pin it down to what specific year.

20 Q So around the early part of 1980's?

21 A Yeah, I would guess so.

22 Q And what kind of training was that?

23 A Just reviewing the handling of hazardous materials,
24 the -- not the materials, itself, the -- the
25 paperwork.

1 Q Okay. Was that a seminar or training that was
2 sponsored by Conrail?
3 A Sponsored by Conrail.
4 Q It would be --
5 A A training class by them.
6 Q Okay. And were the instructors employees of
7 Conrail?
8 A Yes.
9 Q Do you remember who the instructors were?
10 A The last one I had was Norm Mickrut, but before
11 that I can't remember the name.
12 Q Mickrut?
13 A M-i-c-k-r-u-t, I think it is.
14 Q Okay. Do you know where Mr. Mickrut is?
15 Is he still with Conrail?
16 A I don't really know. I think he was.
17 Q All right. At that -- at that training seminar in
18 1980, do you remember whether specific spills or
19 releases of hazardous substances were discussed?
20 A No.
21 Q Do you remember whether anybody mentioned a
22 specific spill that occurred out at the Elkhart
23 Yard during that seminar?
24 A No. We didn't really discuss things like that.
25 This was just strictly the types of chemicals and

1 the proper paperwork for them.

2 Q Okay. Do you remember the chemical
3 trichloroethylene ever being discussed at that
4 seminar?

5 A No.

6 Q What about carbon tetrachloride?

7 A No.

8 Q Did you attend any seminars after 1980 while you
9 were with Conrail?

10 A Not for that, no.

11 Q For anything else?

12 A For a new program they have called Quality
13 Improvement, and I attended one of those last year.

14 Q And briefly, what is quality improvement?

15 A It's just, more or less, trying to get the
16 departments on Conrail to work together.

17 Q All right. So you didn't attend any seminars at
18 Conrail prior to 1980. Is that accurate?

19 A No.

20 Q Have you had any training or -- and by training I
21 mean seminars, either formal or informal, relating
22 to hazardous materials other than the one you
23 identified in 1980?

24 A No.

25 Q Are you a member of any trade associations or

1 groups?

2 A Communications union. I think it's TCU is the
3 union.

4 Q How long have you been a member of that union?

5 A 30 -- 35 years, going on 36 years. It's had
6 different names since then, but that's -- that's
7 the clerical union is what it is.

8 Q Okay.

9 You mentioned that in 1954 you were in the
10 Signal Corp?

11 A Uh huh.

12 Q How long were you in the Signal Corp for?

13 A Three years.

14 Q Then in 1957 what did you do?

15 A I got out of the army in May of '57, went to work
16 for New York Central in June of '57.

17 Q Where did you work for New York Central?

18 A Niles, Michigan.

19 Q And what was your responsibilities or -- I'm sorry.

20 What was your title in 1957?

21 A Just yard clerk.

22 Q And in 1957, what were your responsibilities as a
23 yard clerk?

24 A Handling Way Bills, checking cars in the yard.

25 Q Did your responsibilities ever change as a yard

1 clerk?

2 A Have they ever changed?

3 Q Had they changed while you were there in 1957 --

4 A No.

5 Q (Continuing) -- as a yard clerk?

6 Did your title ever change?

7 A No. Well, I mean, you bid from one job to the
8 other. You know, you get a --

9 Q Okay.

10 A (Continuing) -- different job classification, but
11 they're all essentially the same.

12 Q What was your next job?

13 A In the spring of '58, then I moved -- they closed
14 the yard in Niles, and I moved to Elkhart.

15 Q What was your title in 1958 at the Elkhart Yard?

16 A Same.

17 Q Yard clerk?

18 A (No audible response.)

19 Q Were your responsibilities basically the same?

20 A Basically the same.

21 Q Did you have a job after that at the Elkhart Yard?

22 A Different ones. It's -- my job's been essentially
23 the same for 35 years with the exception that in
24 the -- in the first years I checked outside a lot,
25 and the last ten years or so they don't -- they

1 don't do much outside work, very little.

2 Q Okay. What do you mean by "checked outside"?

3 A Well, we used to have to check tracks, you know,
4 like -- I don't know if you're familiar with, like,
5 a receiving yard and a classification yard like
6 Elkhart is. When the trains come in, we used to
7 have to walk those tracks and check the car
8 numbers.

9 Q You'd walk the track and check the car numbers, and
10 you did this between 1958 and roughly 1980?

11 A Off and on, yes.

12 Q So, is this something that all the yard clerks
13 would do? Was it a general --

14 A Not all of them, but probably most of them at one
15 time or another have done it.

16 Q Okay. Beginning in 1958 when you were at the
17 Elkhart Yard and when you first were assigned to
18 the Elkhart Yard, do you remember who your
19 supervisor was then?

20 A I can see his face, but as far as to remember his
21 name, I don't think I can.

22 Q Do you remember who your supervisor was after he
23 left?

24 A Yeah, I do. Art Stoner was his name.

25 Q Art Stoner?

1 And what year was that, approximately?

2 A '59 or '60, probably somewhere along in there.

3 Q Do you know where Mr. Stoner is today?

4 A He's retired. Lives in Florida.

5 MR. CUNNINGHAM: That would be a good
6 place for a deposition.

7 MR. LINDLAND: Yep.

8 BY MR. LINDLAND:

9 Q Do you remember any of your other supervisors after
10 Mr. Stoner?

11 A I can remember their names, but as far as what
12 years that they were there, I couldn't tell you.

13 Q Okay.

14 A I've had so many of them.

15 Q That's fine.

16 What other names?

17 A Paul Smith.

18 Q Do you know where Mr. Smith is today?

19 A No, I sure don't. I would have to guess he might
20 be retired.

21 Q Okay.

22 A It's -- it's hard for me to remember their names.
23 Jack Kenny works in Pittsburgh now.

24 Q Is he with Conrail?

25 A Yes.

1 Hal Brandt. He's also in Pittsburgh now. I
2 don't remember all those now.

3 Q Okay. Who's your supervisor now?

4 A Betty Birr.

5 MR. CUNNINGHAM: Do we have the dates
6 for Kenny and Brandt?

7 Q Do you know the dates of the last two that you
8 mentioned, Mr. Kenny and Mr. Brandt, approximately?

9 A In the mid 80's. I couldn't say which year.

10 Q What about Mr. Smith?

11 A That's way back. I would have to guess in the 60's
12 on that. Late 60's or early 70's.

13 Q Okay. Beginning in 1958, I guess, did you have
14 anybody working under you?

15 A No.

16 Q Did you have anybody working under you between 1958
17 and the present?

18 A No.

19 Q Okay. Is your office located in the hump tower?

20 A Yes.

21 Q If you could briefly describe your responsibilities
22 I guess beginning in 1958 and any significant
23 changes between '58 and the present.

24 A Well, there's -- I don't know how many different
25 job classifications are in the office, but I've

1 worked every job in the office at one time or
2 another. The one I have now is I handle Way Bills
3 for outbound trains.

4 Q Okay. Is that what's known as the bill rack clerk?

5 A Yes.

6 Q I understand there's a chief clerk, a bill rack
7 clerk and a couple other ones there, I believe?

8 A Camera clerk.

9 Q Camera clerk. And what's the other one?

10 A They call him a utility clerk which could mean
11 anything I guess.

12 Q Okay. And you've worked all of these?

13 A Uh huh.

14 Q Is there any one that you worked more -- more than
15 the others?

16 A No, I don't think so.

17 Q What does a camera clerk do?

18 A Checks outbound poles as they pull the cars out of
19 the classification yard to build up outbound
20 trains. He checks those cars on the cameras that
21 they have in the camera room.

22 Q And has to check for the numbers, right?

23 A Uh huh.

24 Q Okay. Now, you mentioned that prior to 1980 you
25 would go and walk the track to check the numbers.

1 Was that before they had cameras?

2 A Yes.

3 Q So in 1980 you got cameras, and that is what would
4 check them?

5 A I -- I couldn't say if that's the actual year
6 that -- that they got -- got the cameras. It
7 doesn't seem to me like it's been that long. It
8 could have been.

9 Q Okay. But, is that the main distinction between
10 the time periods, I guess?

11 A Uh huh, yes.

12 Q So since the cameras came there was no need to go
13 and walk the train?

14 A Outside and do any checking.

15 Q I see.

16 Okay. Do you know whether there are any
17 copies of the film from the cameras that are kept?

18 A We keep those tapes for probably two days maybe.

19 Q Do you know if copies are made?

20 A No.

21 Q No, they aren't?

22 A They aren't made.

23 Q And I assume the tapes are erased or taped over
24 after this?

25 A Taped over. We have a certain number of tapes that

1 we use.

2 Q Okay.

3 Okay. Beginning in 1958 you mentioned that
4 you would go out, and for one of your job
5 responsibilities you'd go out and walk the tracks.

6 Why, exactly, would you walk the tracks? You
7 would look for a number?

8 A To line the -- the Way Bills up. At the time, we
9 used Way Bills. You had to make sure there was a
10 Way Bill for that car.

11 Q Okay. So, you would walk the track to make sure
12 the Way Bills were in --

13 A Order.

14 Q (Continuing) -- proper order?

15 A Uh huh.

16 Q Was there any other reason for walking the tracks?

17 A Well, you have what they call a No-Bill track which
18 is cars that -- that come in without any billing,
19 and that track was walked every day so you could
20 get any information off the car that was available
21 to help you, you know, get the billing on the car,
22 like seal numbers or packing slips or so forth.

23 Q So there would be cars without Way Bills?

24 A Uh huh.

25 Q And why would there be a car without a Way Bill?

1 A They get misplaced somewhere along the line that --
2 you know, that some little yard that doesn't check
3 things physically would be put in a train; and it
4 would end up maybe in Elkhart or, you know,
5 somewhere like that. It happens.

6 Q And does that still happen?

7 A Yes.

8 Q Approximately how often does it happen; would you
9 say?

10 A Well, the running count on the whole track I would
11 have to guess runs between maybe 15 cars up to 40
12 or 50 a day, maybe.

13 Q 15 to 40 a day without Way Bills?

14 A Yeah. And not all of them would actually be
15 classified as a No-Bill because some of them are
16 empties that just need to be, you know, given an
17 order for, like, a car -- some company wants an
18 empty car.

19 The loads, actually I would think probably a
20 dozen a day, maybe.

21 Q A dozen that just are loaded but have no Way Bill?

22 A That the Way Bill hasn't been issued yet on them.

23 Q Okay. So if you find a car that doesn't have a Way
24 Bill, what happens to the car?

25 A It stays in Elkhart until they get the proper

1 billing on it.

2 Q Is it moved?

3 A Is it moved?

4 Q Is the car moved to this No-Bill track?

5 A Yeah.

6 Q Okay. And then, so this track is composed of just

7 cars without Way Bills?

8 A And they move them at different times, but the --

9 but, yeah, mostly it's -- it's cars on that track

10 are cars that don't have proper billing.

11 Q And then the proper information or the billing

12 information that you need is gathered somehow. Is

13 that right?

14 A Uh huh.

15 Q And how -- how is that gathered?

16 A Well, we have what we call a No-Bill clerk; and he

17 calls the different areas. Usually you can tell

18 the area the car come from by the seal number on

19 it.

20 Q CO number?

21 A Seal.

22 Q Oh, seal, s-e-a-l?

23 A Yeah, that you seal the car doors with.

24 Q Oh, okay.

25 A And he calls those areas or maybe a specific

1 company, you know, if he's got a packing slip or
2 something like that.

3 Q Wait. So a seal number is a number that indicates
4 where the car came from?

5 A Each -- each area of Conrail has -- has their own
6 seal numbers. They'll have an initial and a -- and
7 a seal number, usually a six or an eight digit
8 number, and you can pretty well tell where it came
9 from on Conrail by that.

10 Q And then how would you find out the source of the
11 car or the material?

12 A Well, you'd just have to call around until -- until
13 you find the company that -- that loaded the car,
14 and then they -- they usually have the billing on
15 hand. It just hasn't been entered into the
16 computer system.

17 Q Oh, okay.

18 All right. And then the No-Bill clerk would,
19 I take it, gather the information, make out a new
20 bill and attach it to the car?

21 A Well, they -- we enter it into the system then and
22 it's -- it's available to anyone wherever the car
23 travels then.

24 Q Okay. Is there any other reason that you would
25 walk the tracks?

1 You mentioned check for No-Bill cars and for
2 the seal numbers?

3 A No, not really. Unless -- well, it would be the
4 same thing as a No-Bill if you were looking for a
5 car that was misplaced, which happens. They get
6 miss-switched, you know, maybe go to the wrong
7 track. Then you might be looking for a certain
8 type car, you know, like a carload of autos or
9 something like that that's been lost in the yard.

10 Q And by "lost," you mean misplaced in the wrong
11 train or on the wrong track?

12 A Right.

13 Q How often does that happen, approximately?

14 A You have different times of the year that that
15 happens. Like, in the wintertime you'd have a lot
16 more of it because of the -- the conditions. But I
17 wouldn't -- probably, maybe a half dozen a day at
18 the most; and they usually turn up in a camera
19 check, you know, before the day is out so.

20 Q All right.

21 MR. CUNNINGHAM: Let me ask you
22 something off the record here.

23 (Discussion held off the record.)

24 MR. LINDLAND: Back on.

25 Q When cars are misplaced, what -- what do you do to

1 get them back in line?

2 A You just have to find them is all.

3 Q Okay. So if, for example, a tank car is misplaced
4 somewhere, it's rehumped, I presume; and it goes
5 back onto the same line. Okay.

6 Are there any other functions for walking the
7 track? I mean, is there any other reason that you
8 would walk the track?

9 A No.

10 Q Okay. If you -- in walking the tracks and looking
11 for these things, if you noticed a leaking car or a
12 car with spilled material, would you notify
13 somebody?

14 A Yes.

15 Q And who would you notify?

16 A The Car Department normally.

17 Q Would you make a record of that information?

18 A No. They -- I'm sure they would. I wouldn't,
19 personally.

20 Q Okay. Beginning in 1958 -- and I realize this goes
21 back a while -- do you remember walking the tracks
22 and seeing a leaking car, tank car ever?

23 A Tank car, no.

24 Q Any other car?

25 A I've -- yeah, I've come across stuff spilled out of

1 cars that, you know.

2 Q What kind of material?

3 A All different kinds. Just about everything you
4 could name.

5 Q Carbon tetrachloride?

6 A No, no.

7 MR. CUNNINGHAM: Nice try.

8 Q Mostly powders or?

9 A Mostly --

10 Q Liquids?

11 A (Continuing) -- grain products, flower products,
12 you know.

13 Q Okay.

14 A Beer, watermelon.

15 Q Do you remember ever seeing stained ballast or
16 stained ties as a result of a leaking car?

17 A I remember seeing stained ballast, but I couldn't
18 say, you know, that it was because of a leaking
19 car, no.

20 Q Do you remember ever walking the tracks and seeing
21 a ruptured tank car or a damaged car in any way?

22 A No.

23 Q And, again, if you saw a ruptured car, you would
24 notify the Car Department?

25 A Right.

1 Q Are you familiar with a CT-168 form?

2 A Uh huh.

3 Q How are you familiar with that form?

4 A I fill them out practically every day.

5 Q Approximately how many do you fill out a day?

6 A Dozen.

7 Q And briefly, a 168 form is an Unusual Occurrence
8 Report?

9 A For dangerous cars.

10 Q For dangerous cars.

11 And how is a dangerous car determined?

12 A Depending on the commodity that's loaded in it.

13 Q Okay. Is there a book or some source that has a
14 list of dangerous commodities?

15 A It has dangerous commodities and the commodity code
16 number on it.

17 Q And what list is that that you're thinking of?

18 A Pardon?

19 Q What list is that that you're thinking of?

20 A It's -- that's what it's called. It's the
21 Commodity Code Book.

22 Q Commodity Code Book?

23 A It's a book with all the commodities that are
24 handled, and they have a -- a universal number that
25 they use. You know, all the railroads use it for

1 those specific commodities.

2 Q Is that book also known as the red book?

3 A No, the red book is, I think, strictly for
4 dangerous materials.

5 Q Whereas, this --

6 A The commodity book covers all commodities.

7 Q I see.

8 And the red book, then, just has dangerous
9 commodities, but it's the same information. Is
10 that --

11 A No, no, no. The commodities book will give you a
12 specific definition of a commodity. The dangerous
13 book will -- will tell you -- give you the chemical
14 name, how the car should be handled.

15 Q Now, you mentioned that you fill out roughly a
16 dozen of these a day?

17 A Uh huh.

18 Q And is that for -- for any kind of damage or?

19 A It's for any -- any car that is classified as a
20 dangerous, hazardous commodity.

21 Q Okay. I'm talking about the CT-168.

22 A Uh huh, that's what 168 is. It's a Hazardous
23 Commodity Report.

24 Q Okay. So there are 12 occurrences a day that occur
25 with hazardous substances?

1 MR. ERMILIO: He's not saying
2 occurrences. I think you may have -- if you
3 could repeat your question about what the
4 CT-168 is, I think there's some confusion
5 between the two of you.

6 BY MR. LINDLAND:

7 Q Okay. When do you -- why do you fill out a 168
8 form?

9 A If the train -- if an outbound train has hazardous
10 commodities in it.

11 Q Okay. So for every car that contains hazardous
12 commodities, a 168 is filled out?

13 A Well, each train, an outbound train.

14 Q Right.

15 A One train might have 15 cars, and they'll all be
16 listed on the 168 for that train.

17 Q Just -- okay.

18 A For that particular train.

19 Q But it's just the cars that contain hazardous
20 materials are listed?

21 A Right.

22 Q Okay. And how is it listed on there? Is it listed
23 by trade name, that is, the commodity?

24 A No, it will -- it will list it whether it's
25 combustible, flammable gas, non-flammable gas.

1 Q Okay.

2 A Poison gas, explosives, you know.

3 Q Okay. Now, I know that's true for the recent ones.
4 Has that always been true since 1958?

5 A As far as I can -- we used to handwrite the things
6 out, and we more or less -- actually, the old
7 handwritten ones we just used to show them either
8 dangerous or explosive. That was the only
9 classification that we used on -- years ago.

10 Q But now you use, like, corrosive or?

11 A And it's an automatic thing now.

12 Q Okay. Are you aware of any tank cars that required
13 a CT-168 that contained carbon tetrachloride?

14 A Offhand, I can't remember any.

15 Q What about trichloroethylene?

16 A No, not offhand. I can't -- you know, like I say,
17 I handle the 168; and we have the Way Bills and the
18 outbound train; but I don't read every Way Bill,
19 you know. I just -- all I'm really interested in
20 is that there's a Way Bill for each car and that
21 it's the proper length from the engine.

22 Q I understand. Okay.

23 Are you familiar with Miles Laboratory?

24 A Yes.

25 Q How are you familiar with them?

1 A Well, I -- like I say, I've worked different jobs
2 that I used to do the billing for Miles and --
3 Q When you say "a billing," do you mean the purchase
4 orders or the transportation billing?
5 A The transportation billing.
6 Q Okay. Do you know what materials they purchase or
7 what materials go through the Elkhart Yard and are
8 transported to their facility?
9 A Lately, I haven't -- haven't really been into that
10 since the automatic billing; but when I used to
11 bill the stuff that we did by hand, caustic soda
12 maybe and different grain products was mostly what
13 I remember of it.
14 Q Was caustic soda in a liquid or powder form?
15 A Powder form.
16 Q Do you remember whether any liquids were ever
17 transported to Miles?
18 A Yeah, but to name what they were, I couldn't really
19 say.
20 Q Do you remember what the label on the tank cars --
21 I presume it was in a tank car -- what the label on
22 it said, for example, GATX or the source of the
23 car?
24 A Well, I think most of their -- probably GATX or
25 UTLX.

1 Q UTLX?

2 A They have assigned cars for Miles that --

3 Q Okay.

4 Are you familiar with any other materials
5 that were sent to Miles Laboratory or from Miles
6 Laboratory?

7 A No, not really that I remember.

8 Q Are you familiar with a company called Carpenter?

9 A I've heard of them. I know -- I know they're in
10 Elkhart and that they receive cars.

11 Q Do you know what material they receive?

12 A No. I know it's a chemical, and that's all I can
13 tell you.

14 Q Are you familiar with the term "chlorinated
15 solvents"?

16 A I think I have seen the term, yeah.

17 Q And where have you seen that term?

18 A Just probably from different Way Bills, you know.
19 Like I say, I read Way Bills every day, but to
20 remember which one I got it from or, you know,
21 whatever.

22 Q But you've seen Way Bills that say "chlorinated
23 solvents"?

24 A I would think, yeah.

25 Q Do you know approximately the date when you've seen

1 those Way Bills?

2 A Like I say, I read them every day and I --

3 Q Okay. Are you familiar with any of the
4 manufacturers of any either chlorinated solvents or
5 liquids that are sent through the yard in tank
6 cars?

7 A Geeze, offhand, I couldn't -- I couldn't tell you.
8 I mean, I see a lot of the companies; but to name
9 one, no, I couldn't do that.

10 Q Okay. That's not the kind of information that
11 would be on a Way Bill anyway. Is that correct?
12 For example, the source of the material?

13 A Oh, yeah, that's the -- the town that it originated
14 in and the company that loaded it is all on the Way
15 Bill.

16 Q Okay. Are you aware of any records regarding
17 complaints from workers regarding spills or leaks
18 of hazardous materials?

19 A No.

20 Q What about neighbors? Have any complaints?

21 A (No audible response.)

22 Q If a spill occurs in the yard, in the Elkhart Yard,
23 how is that reflected on a CT-168?

24 A It wouldn't even show on there because that 168
25 is -- is strictly for an outbound train. And if

1 that car was ruptured or leaking, it wouldn't be in
2 the outbound train. They would take it out and
3 down to the car shops or, you know.

4 Q So that car would not be listed, then, on the 168?

5 A No, it wouldn't. It wouldn't leave the yard in
6 that shape.

7 Q Okay. 168's are only for cars outgoing?

8 A Outbound trains.

9 Q Okay.

10 Do you know whether all spills are recorded?

11 A I can't say for sure, but from my own personal
12 knowledge, I would say that they are.

13 Q Are you familiar with any spills of hazardous
14 materials?

15 A The only one I can remember was maybe five or six
16 years ago they had a -- a tank car that was -- was
17 actually empty. It was residue, but I think it was
18 ammonia, but I'm not positive about it that we
19 received from the Burlington Northern Railroad like
20 that, and they called the local Haz-Mat team out to
21 check it out.

22 Q Were you involved with that at all?

23 A No.

24 Q And that -- okay.

25 How did you find out about it?

1 A Well, I was working in the office; and they cleared
2 the area of certain people that -- the ones that
3 were working outside.

4 Q Okay.

5 A Until the Haz-Mat team inspected it, you know, to
6 make sure it wasn't leaking anymore.

7 Q Okay. If we could just go back a moment to prior
8 to 1980 when you would go out and do physical
9 checks in the yard of the cars to identify the
10 numbers and a No-Bill car.

11 If you noticed a leak, you would notify, you
12 said, the train --

13 A Car Department.

14 Q The Car Department.

15 Who would you notify in the Car Department?

16 A Usually the foreman that was on duty.

17 Q Did you ever do that?

18 A Yeah.

19 Q Do you remember when?

20 A Well, it wasn't hazardous material. It was just
21 cars that were open. We usually told them anytime
22 that we'd see a door open or anything like that
23 because it was their responsibility to close and
24 seal the car.

25 Q Okay.

1 Do you remember hearing about any spills
2 other than the ones you've identified?

3 A I've heard about a lot of them; but to say what
4 kind or, you know, I mean, over the years you hear
5 things like that; but to, you know, say
6 specifically what it was, I couldn't.

7 Q Do you remember hearing about a spill around 19 --
8 like between 1966 and 1969 regarding a tank car
9 that ruptured?

10 A No. I can't remember anything from then.

11 Q Okay. Is there any specific spills that you can
12 remember hearing about?

13 A Different ones up and down the road, you know, in a
14 derailment maybe out of the yard. Guys will talk
15 about that. But as far as the chemicals or, you
16 know, or what kind of cars, no, I --

17 Q Do you remember whether those -- and I'm thinking
18 about the ones -- I'm talking about the ones now
19 that you have in mind. Do you know whether any of
20 those involved hazardous materials?

21 A I would have to doubt it because normally when you
22 have a derailment on the road like that and there's
23 hazardous materials involved, most normally you get
24 a fire or something like that, you know, and I
25 don't -- I don't remember offhand.

1 Q What about prior to 19 -- say, 1970? Do you
2 remember any?

3 A No.

4 Q Did you ever work in the customer service center at
5 Elkhart or have any responsibilities that involved
6 them?

7 A That's what they call the office now is the
8 customer service thing.

9 Q It is?

10 Do you -- are you involved at all with claims
11 made by customers?

12 A No.

13 Q Are you involved with claims -- are you aware of
14 any claims in the past regarding loss of -- of
15 material?

16 A Well, I know they get them; but as far as, you
17 know, specific -- most of that stuff was handled by
18 the Claims Department.

19 Q And who is in charge of the Claims Department; do
20 you know?

21 A I don't even know now.

22 Q Okay.

23 A Since they centralized everything, I just -- you
24 lose track of who's responsible for what. I don't
25 really know.

1 MR. LINDLAND: I have no further
2 questions.

3 MR. CUNNINGHAM: You want me to go?

4 MR. ERMILIO: Yeah.

5 CROSS EXAMINATION

6 BY MR. CUNNINGHAM:

7 Q Mr. Dekker, I think --

8 MR. ERMILIO: Excuse me one second. If
9 you could, just identify yourself.

10 MR. CUNNINGHAM: Yeah, sure.

11 Q I'm Mr. Cunningham. I represent the Penn Central
12 Corporation, and I refer to you erroneously as
13 Mr. Dekker. Looking at my notes, you are
14 Mr. Lenox. I have just a few questions for you.

15 I take it that having worked from the -- let
16 me look here a minute -- late 70's to the
17 present -- correction.

18 Having worked from the late 50's in Elkhart
19 to the present, you've met a lot of different
20 people working there; and you have worked for not
21 only New York Central but also Penn Central. Is
22 that right?

23 A Right.

24 Q And it's my understanding that you now work for
25 Conrail. Is that right?

1 A Right.

2 Q Do you recall having met a Mr. Claude Brewton?

3 A Yes. He used to work for us.

4 Q And in what connection did you work with him?

5 A He was in the same office that I worked in.

6 Q So you were co-workers?

7 A Right.

8 Q He has indicated to us that he worked in the mid
9 and late 60's.

10 A Correct.

11 Q Between roughly 1965, as I recall, and 1970?

12 A Yeah.

13 Q Do you remember him at that time?

14 A Uh huh.

15 Q Was his office near you?

16 A Yeah.

17 Q Have you had occasion to talk with him at all about
18 your deposition today?

19 A No. I -- I haven't seen Claude for probably 15
20 years.

21 Q Do you recall his having talked about any spills of
22 any chemicals at Elkhart during the period 1966 to
23 1968?

24 A Offhand, no.

25 Q All right. Do you recall either hearing him or

1 hearing about a train derailment of any kind
2 involving the spill of carbon tetrachloride?

3 A No.

4 Q Do you know Mr. Ted Berkshire?

5 A No.

6 Q Are you familiar in your job at all with the
7 procedures involved in cleaning of cars or
8 degreasing of cars in the 60's and 70's while you
9 were working either for New York Central or Penn
10 Central?

11 A Well, that isn't included in my -- in my job
12 classification. The only time I would run across
13 that would be in my travels, maybe being in and out
14 of the car shops.

15 Q So, you're familiar only in a general way; not from
16 a specific job --

17 A Right.

18 Q (Continuing) -- responsibility there?

19 A Right.

20 Q Can you tell me how extensive that familiarity
21 would be with cleaning in the time period I'm
22 talking about?

23 A It would be very limited.

24 Q Do you -- have you ever observed the cleaning of a
25 car, either a tank car or any kind of a train car,

1 that would -- that you can recall?

2 A Not a car. Parts maybe. You know, specific parts.

3 Q Do you recall the use of any kind of chemicals for
4 the cleaning of either parts or cars?

5 A I know they used a chemical, but to say
6 specifically what it was, no.

7 Q Okay. So, your familiarity would be only with
8 knowing that the parts or cars were clean; but what
9 they were cleaned with, that was really someone
10 else's job. Is that correct?

11 A Right.

12 Q Now, getting back for a moment to a spill in the
13 yard. If it were to have occurred in the late
14 60's -- I'm talking about 1966 to 1970, let's say.
15 Do you recall what the procedure was at that time
16 for reporting spills of any kind?

17 A They usually just reported it to the Car
18 Department, and they would -- you know, go down and
19 pluck the car out and maybe -- most Way Bills for
20 hazardous materials even then had a -- a number of
21 the company to notify them, you know. But that --
22 that was about the extent of it.

23 Q All right. So, as I understand it, the shipper
24 would be notified?

25 A Right.

1 Q In some way that an incident had occurred, for
2 example, where material that was being shipped was
3 lost in some way. Is that right?

4 A Uh huh.

5 Q And then that was the main purpose of it at that
6 time. Is that correct?

7 A Right.

8 Q So, I don't want to put words in your mouth.
9 Correct me if I'm overstating it, but it's my
10 understanding that there was no formal procedure
11 then as you have today for reporting hazardous
12 spills?

13 A No.

14 Q Is that correct?

15 A That's right.

16 Q So the situation changed as time went by?

17 A Yes.

18 Q And the changes occurred when? Do you recall?

19 A I would have to guess around 1980, somewhere right
20 in that area, give or take a year or two.

21 Q So the reporting procedures began to change as best
22 you can recall in the early 80's.

23 If a spill would have occurred in the mid
24 60's, again, back to the '66, '68 time period, who
25 would have known about such a spill?

1 A The Car Department and probably the yard
2 superintendent.
3 Q Now, as best you can recall; and it's not easy
4 because you've been through a number of years at
5 the yard. But, can you give us any names of people
6 that were in the Car Department during the period
7 1966 to 1968?
8 A I can't think of the guy's name. Of course, it
9 wouldn't do you much good now. He's dead now
10 anyway, but the guy that was a foreman. The only
11 one I can remember is the yard superintendent at
12 the time.
13 Q All right. Well, what is his name?
14 A Jim Page.
15 Q And is Jim Page still living?
16 A Yeah.
17 Q And where does he live?
18 A Last I knew, he was living in Florida.
19 Q Okay. So, he would have, in all probability,
20 during that period of time as superintendent, have
21 been notified of any such spill?
22 A That's correct.
23 Q And that would be true even though as you've
24 testified and as we all know, things have become
25 more disciplined, I guess you'd say --

1 A Yes.

2 Q (Continuing) -- in the present time period?

3 So, but even in those days, from what you're
4 testifying as I understand it, he would have at
5 least been told about that. Is that right?

6 A That's right.

7 Q Are you familiar at all with carbon tetrachloride?

8 A Just vaguely. I know it's used as a cleaning fluid
9 and that's.

10 Q Basically a dry-cleaning component as I understand
11 it too.

12 Over the years, Mr. Lenox, just in looking at
13 Way Bills, has there been a lot of carbon tet going
14 in tank cars in and out of the yard?

15 A I can't remember that much, no.

16 Q You have seen it, though?

17 A To say specifically that I've seen a tank car of
18 carbon tet, I'd say no.

19 Q Who generally, if you know, ships, buys and sells
20 carbon tetrachloride?

21 A No, I don't.

22 Q Is there someone in Conrail that is familiar with
23 buyers and sellers and what they transport and keep
24 such records?

25 A Well, the person that would be familiar with it I

1 would assume would be the -- they have different
2 departments for different commodities, and the
3 person that was in charge of that department should
4 know.

5 Q Do you know what the name of that department is?

6 A Sure don't.

7 Q But there is, to your knowledge, a separate and
8 distinct department that deals with the buyers and
9 sellers. Is that right?

10 A I would have to guess the department would probably
11 be somewhere in the Sales Department.

12 Q And is the Sales Department -- well, strike that.

13 Where is the Sales Department located; do you
14 know?

15 A Philadelphia.

16 Q Is that the only Sales Department, or are there
17 other divisions that have Sales Departments?

18 A They have sales representatives in different areas.

19 Q And these would be in the days of Conrail, Conrail
20 sales reps who go out and try to obtain business
21 for the company?

22 A Correct.

23 Q And ship it. Is that right?

24 A Correct.

25 Q And I take it this was true also at the time of

1 Penn Central's ownership. Is that right?

2 A That's right.

3 Q And if a person were to go to the Sales Department,
4 then they may well find the information that I am
5 asking for. Is that what you believe?

6 A I would think so.

7 Q To your knowledge with respect to the
8 configuration, location, if you will, of the
9 tracks, themselves, have they always remained the
10 same in terms of being numbered and located in the
11 same place?

12 A Yes.

13 Q Okay. No changes that you can recall?

14 A Just minor changes. Nothing major.

15 Q Going back again to the period 1966 to 1968, if a
16 large quantity of carbon tetrachloride were to have
17 been spilled at Elkhart, do you believe that the
18 fire department would have been called at that
19 time?

20 A No.

21 Q Okay. Is there any reason why you feel that way,
22 or you just don't know?

23 A They -- they didn't call the fire department unless
24 there was actually a fire.

25 Q Okay. Was anybody called in that time period that

1 you're aware of?

2 A No.

3 Q For something like that?

4 Are you aware of any reporting requirements
5 that were necessary at that time period?

6 A No, I don't -- I don't think there were.

7 Q I'm not suggesting that you should have. I'm just
8 asking for your knowledge.

9 A No, I don't -- I don't think there were any
10 requirements.

11 Q Mr. Lindland at a previous deposition, I believe,
12 referred to a leaking tank car area.

13 Are you familiar with any such area of the
14 yard that would have been set aside and designated
15 as a leaking tank car area?

16 A No.

17 Q Just summarizing, it's my understanding based on
18 the answers you gave to Mr. Lindland that the only
19 spill that you can recall in all the years that
20 you've been at Elkhart was some sort of an ammonia
21 spill or escape. Is that correct?

22 A Uh huh.

23 Q And that you know of no other spills including any
24 in the late 60's which I've asked you about
25 involving carbon tetrachloride?

1 A Yeah, I don't -- I don't recall any in that time
2 period.

3 Q Is it likely that -- well, let me ask you another
4 question first. Strike that.

5 Tank cars generally hold a certain amount of
6 gallons, do they?

7 A Yeah.

8 Q Is there a maximum quantity?

9 A Uh huh.

10 Q How much do they usually hold?

11 A Well, there are different sizes now; but normally
12 I would guess -- if I remember correctly, it's
13 around -- between 60 and 80,000 gallons.

14 Q Would there have been any tank cars that would have
15 held as much as 250,000 gallons.

16 Q That's highly unlikely because you figure a gallon
17 is gonna' be, at the least, probably what? 4
18 pounds?

19 So you're talking 240,000 pounds. You're --
20 you're talking over 800,000 pounds in actual
21 weight, and there's -- I don't know of a car made
22 that -- that will handle that weight.

23 Q Assuming that a spill of the magnitude that I just
24 suggested to you, 250,000 gallons did occur at
25 Elkhart of materials such as carbon tetrachloride,

1 do you feel that that would have been something
2 that would have been noteworthy to --

3 A Certainly.

4 Q (Continuing) -- the staff and the people at the
5 yard?

6 A Certainly.

7 Q At that time? Is that right?

8 A That much, yes.

9 Q And is that something that you would have been
10 likely to have heard about?

11 A Probably, yes.

12 Q Okay. And are derailments of tank cars more
13 noteworthy than other type -- well, strike that
14 question. Strike that. Let me ask you another
15 one.

16 Is it likely that people at work in your
17 capacity would have heard about derailments than
18 the other type of incidents involving tank cars
19 that may have collided without derailment?

20 A No, it -- it depends. They have derailments, you
21 know, that we never hear about because no one talks
22 about it. You know, it's --

23 Q So derailments are not something that everybody
24 just sort of freaks out about? It's not an unusual
25 event?

1 A No, unless -- unless you happen to be there and see
2 the report and the record of it.

3 MR. CUNNINGHAM: Okay. I think that's
4 all the questions I have at this time. I may
5 have some at a later time, but thank you.

6 MR. ERMILIO: Can you give me just a
7 minute?

8 THE WITNESS: Can I take a break?

9 MR. LINDLAND: Sure.

10 (Whereupon a short recess was taken.)

11 MR. ERMILIO: I just have a couple of
12 questions.

13 CROSS EXAMINATION

14 BY MR. ERMILIO:

15 Q Mr. Lenox, if we can go back to the -- to the
16 1960's that's been discussed here recently.

17 If there were a spill, would you be notified?
18 Would you, personally, be notified?

19 A No.

20 Q Was it part of your responsibility in any of the
21 positions within the clerk's office to find out
22 about any spill that occurred at the yard back
23 then?

24 A Normally, they -- they will notify somebody because
25 on -- on certain materials, the shipper has to be

1 notified, and -- and certain records have to be
2 kept, and our office would keep those records.

3 Q Would you have to be notified, or would a certain
4 position within that office have to be notified?

5 A Probably the supervisor.

6 Q The supervisor over the clerk's office?

7 A Uh huh.

8 Q Would the supervisor then notify all of the -- all
9 the clerks working under that supervisor of a
10 particular spill?

11 A It would depend on if their job was involved in
12 some way, then she would. Otherwise, no.

13 Q So, is it possible that a spill could occur, but
14 you would not learn of it?

15 A Sure.

16 MR. ERMILIO: I have no other questions
17 at this time.

18 MR. LINDLAND: I have a few more. I'll
19 try to make them short.

20 REDIRECT EXAMINATION

21 BY MR. LINDLAND:

22 Q You mentioned that you were aware of car cleaning
23 and some chemicals used for cleaning parts?

24 A Parts cleaning.

25 Q Okay, parts.

1 Did you actually see the parts being cleaned?
2 Have you ever?

3 A Just glancing, you know, as I walked by or
4 something like that.

5 Q Are you aware of any particular vapors or smells
6 associated with that material?

7 A Yeah, you could smell it. But, you know, to say --
8 to say what the smell was, no.

9 Q Well, can you describe it? I mean, was it like
10 paint thinner or soap or something?

11 If you could attribute it to one kind of
12 substance that is rather common.

13 A I would -- yeah, that would probably be as close as
14 anything, I would think.

15 Q Which one?

16 A Paint thinner.

17 Q So a volatile sort of smelly material?

18 A Uh huh.

19 Q Do you know what sort of container that material
20 came in?

21 A I don't know. Just, you know, like you say,
22 what -- what they were cleaning them in. That's
23 about all.

24 Q And what kind of -- what were they cleaning them
25 in?

1 MR. ERMILIO: Kurt, what time period are
2 we talking about?

3 Q You mentioned that some parts were cleaned.

4 A Usually in a bucket or something like that.

5 Q Okay. What year did you see this -- this cleaning
6 process?

7 A Oh, at the time I was on that job, that was
8 probably late 60's, early 70's I would guess that I
9 did a lot of walking around the yard.

10 Q Do you remember seeing it after that or before
11 that?

12 A No.

13 Q And you saw it then because that was part of your
14 job responsibilities?

15 A That I was out in that area.

16 Q Okay. And, again, you said that they would be
17 cleaning them in a bucket.

18 Do you remember seeing 55 gallon drums of
19 material near that area?

20 A I see a lot of 55 gallon drums; but, you know, I
21 couldn't tell you what was in them. But, yeah,
22 they've always got them sitting around.

23 Q And this is at the car shop?

24 A Yes.

25 Q Do they still have them sitting there?

1 A Now, that I couldn't tell you. I haven't been out
2 in that area probably to do any walking around to
3 speak of probably 10 or 12 years.

4 Q So we're talking about roughly 1980?

5 A Yeah, or before.

6 Q All right.

7 A The jobs that --

8 Q Uh huh.

9 A (Continuing) -- that I was speaking of, yeah, was
10 before '80. Like I say, late 60's, early 70's, mid
11 70's.

12 Q Okay. So, say in that time period when you were
13 walking around out -- out there, you saw 55 gallon
14 drums. Is that right?

15 A Uh huh.

16 Q Do you remember what color those drums were?

17 A Different colors.

18 Q Do you remember any markings or labelings on those
19 drums?

20 Do you ever remember seeing any drums of
21 material being poured on the ground?

22 A No.

23 Q Any buckets of material poured on the ground?

24 A (No audible response.)

25 Q Where specifically in the car shop did you see them

1 washing parts? Was it in the building? Outside
2 the building?

3 Could you sort of --

4 A Well, the building itself is -- is a roof with no
5 sides, you know, so in the general area.

6 Q So both inside and outside?

7 A (No audible response.)

8 Q Is there a cement floor on the outside or cement
9 pad on the outside?

10 A Uh huh.

11 Q Did you ever see parts being cleaned -- let's see,
12 either on the cements floor -- strike that.

13 Have you ever seen parts being cleaned on the
14 cement floor outside the building?

15 A On the cement floor outside the building?

16 Q Right. Outside from under the roof?

17 A I couldn't say offhand. You know, like I say, I
18 remember seeing it; but I don't remember exactly --
19 you know, I couldn't tell you exactly where they
20 were sitting or whatever.

21 Q Okay. Do you remember whether the people washing
22 the parts were using protective clothing?

23 A Yeah.

24 Q And what kind of protective clothing?

25 A Rubber gloves.

1 Q Rubber gloves?

2 Did they wear anything else?

3 A Just most of the people that work in the Car
4 Department wear an outer layer of like canvas
5 clothing or, you know, some sort of coveralls or
6 whatever just so they don't get their -- their
7 clothes all greasy, you know. I mean, that's the
8 norm.

9 Q Like a shop -- a mechanic apron or something?

10 A Yeah, yeah.

11 Q Did you ever see the material that they used to
12 clean the parts with? Do you remember seeing a
13 bucket of it or anything?

14 A No, just --

15 Q Okay. Do you remember whether there were any
16 complaints by any of the workers in the car shop
17 regarding cleaning parts with that material?

18 A No.

19 Q You mentioned earlier a red book which was
20 basically the dangerous chemical book.

21 Are you familiar with the -- the first date
22 that was published? In other words, the first
23 edition of that book came out?

24 A We get updated versions of it every so often; but
25 as far as I know, as far back as I can remember,

1 we've had them.

2 Q Okay. Prior to 1970 you think?

3 A Yeah. Some -- you know, in different forms, but
4 essentially it's the same. It -- it's for the --
5 for the handling of hazardous commodities.

6 Q Okay. You mentioned earlier that the
7 superintendent of the yard, say in the late 70's,
8 between '66 and 68 roughly -- I'm sorry, the late
9 60's, was Jim Page and that he now lives in
10 Florida.

11 Do you remember any of the trainmaster names
12 during that same time?

13 A To tell you the truth, the ones that were
14 trainmasters back then, believe it or not, I don't
15 think there's a one of them still living.

16 Q Really?

17 Do you remember any of the car shop
18 superintendents or managers during that time?

19 A No. Like I say, I -- I can see the guy that was
20 the general foreman then, and I can't think of his
21 name, but he's dead too now.

22 Q How about do you remember anybody who worked in the
23 car shop during that time?

24 A Geeze, to remember. You know, a lot of those guys
25 I knew by their first name, but their last names,

1 you know.

2 Q Right. Okay.

3 You mentioned that in late 60's, early 70's a
4 part of your responsibility was to walk around, and
5 a part of that included you saw -- saw them washing
6 parts.

7 Do you remember anyone who was actually
8 washing the parts, their names?

9 A Huh uh.

10 Q You mentioned earlier that derailments would occur
11 all the time, but you wouldn't necessarily hear
12 about them all?

13 A Correct.

14 Q Do you think that's true with leaking cars as well?
15 Do you think cars would drip or leak sometimes and
16 you wouldn't hear about them?

17 A Yeah.

18 Q Do you think it's -- it's probable that cars would
19 leak and no one would hear about it?

20 A No.

21 Q You think that if a car was leaking, somebody would
22 find out about it?

23 A The way the restrictions are nowadays, no, they --
24 they couldn't afford to do that, no.

25 Q Okay. I'm talking about between 1976 and the

1 present. Say, prior -- between 1976 and 1980?

2 A Well, let's put it this way. Prior -- I would say
3 to around 19 -- early 80's when they started really
4 getting strict about it, yeah. Yeah, it could
5 happen.

6 Q So prior to the early 80's, a tank car could leak
7 and nobody would hear about it?

8 A Correct.

9 Q A while ago Mr. Cunningham asked you about a guy
10 named Claude Brewton, and you indicated that you
11 worked in the same office as Claude.

12 Did you have the same job responsibilities?

13 A More or less, yeah.

14 Q If a car that was loaded was humped and the Way
15 Bill said that the car was not loaded; in fact, it
16 was -- it weighed much less than it actually was,
17 what would happen to that car after it was humped
18 or as it was rolling to its destination?

19 A If a car was loaded --

20 MR. ERMILIO: Could you rephrase that?

21 MR. LINDLAND: Sure.

22 MR. CUNNINGHAM: Yeah.

23 Q My understanding is that cars are humped; that is,
24 they're pushed up a hill; and their weight is input
25 into a computer, and there is a set of retarders

1 that slow the car down as it approaches its
2 destination?

3 A It's going downhill.

4 Q Right.

5 If a car was humped and that car was full;
6 that is, full of material, loaded; but the Way Bill
7 indicated that it was not full; in fact, the Way
8 Bill said it weighed much less than it actually
9 did, what would happen to that car?

10 A Chances are -- not now because the retarders are
11 automatic. But at times -- are you familiar with
12 the yard at Elkhart?

13 Q I'm becoming more familiar with it.

14 A Well, chances are, if the car was heavy enough, it
15 would have ended up at Osceola.

16 Q Okay. And what if there was a car in between
17 Osceola and the oncoming car?

18 A Bump it out of the way.

19 Q Is it possible that a car would be punctured or
20 ruptured and possibly derail?

21 A It's possible.

22 Q Do you think it's probable?

23 A Well, it's highly unlikely for the simple reason
24 that they can see something like that happening;
25 and they could throw a switch and, you know,

1 reroute the car to keep that from happening.
2 Though, it has happened at different times.

3 MR. ERMILIO: Are you talking about
4 today, this -- this theoretical or
5 hypothetical --

6 MR. LINDLAND: What I'm talking about --

7 MR. ERMILIO: (Continuing) -- situation
8 today?

9 BY MR. LINDLAND:

10 Q You mentioned that today it's unlikely because
11 they're automatically retarded, so I assume that
12 prior to recently -- and maybe you can help me out
13 with the date.

14 A The retarders have -- have been under a computer
15 system, I would guess -- let's see. This is '92.
16 '80 -- seemed to me like it was '86 or somewhere in
17 that -- right in that area that they installed the
18 GRS, which is automatic switching, and the
19 retardation devices that they have now.

20 Q So prior to 1986?

21 A They were manually operated.

22 Q Okay. And when they were manually operated, a car
23 that is basically too heavy for what's been
24 inputted or what's on the Way Bill, it could cause
25 an accident.

1 Q Well, yeah. It would -- like I say, it would
2 depend on the circumstances, you know. If you can
3 hump a car down an empty track, you know, and --

4 Q It's no problem.

5 But if there's cars, see, on the track that
6 it's being humped to and those cars are stationary
7 and a loaded car is going towards it, what's --
8 what could happen?

9 MR. CUNNINGHAM: I'm going to object to
10 the form of the question because I don't see
11 how anybody can answer that.

12 It's surely hypothetical if you can do
13 it.

14 BY MR. LINDLAND:

15 Q Do you understand the question?

16 A Yeah, I heard it, that you're wondering what would
17 happen to the car that's being humped into a track
18 that has cars in it.

19 Q Right.

20 A Okay. Now, those -- those retarders are operated
21 by computer which takes into -- into consideration
22 the weight of the car and the whole works and slows
23 it down to a certain mile per hour impact, which
24 they try -- they try to keep the impact between 2
25 and 4 miles an hour.

1 Q Okay. And how is the weight of the car -- how is
2 that -- how is that used, or how is it inputted?

3 Is it -- is the car weighed immediately
4 before it goes down the track?

5 A Most of the cars have a weight on them when they're
6 inputted into the computer. That gross weight is
7 inputted into the computer, and it stays in there.
8 As we send that list up for them to switch those
9 cars, by when that car gets there, that computer
10 reads that gross weight on that car and
11 automatically works that retarder to slow that car
12 down to that --

13 Q Okay.

14 A (Continuing) -- to the speed of --

15 Q So it depends, then, not on the weight of the car
16 but on the weight that's inputted into the
17 computer. Is that true?

18 A More or less, yeah.

19 MR. LINDLAND: Okay. I have no further
20 questions.

21 MR. CUNNINGHAM: Just one, I think.

22 RECROSS EXAMINATION

23 BY MR. CUNNINGHAM:

24 Q To clarify this matter of whether or not in the
25 event of a spill someone in your capacity or a

1 co-worker would be aware of such a spill, as I
2 understand your testimony, it depends on whether or
3 not the shipper would have to be notified. Is that
4 right?

5 A Well --

6 Q You're shaking your head. Is that yes or no or?

7 A If it's a hazardous commodity, you know, that has
8 that shipper's phone number on that Way Bill, then
9 somebody in the office would be notified to notify
10 the shipper.

11 Q I understand. In other words --

12 A Otherwise, we might never hear about it.

13 Q Exactly.

14 So you may or may not have heard about a
15 spill in the late 60's, depending on whether or not
16 you would have been involved in notifying the
17 shipper. Isn't that right?

18 A Right.

19 Q Okay. But someone in the event of a significant
20 amount of cargo loss probably would have known
21 about that in your office so as to notify the
22 shipper. Isn't that right? Yes or no?

23 A Yeah.

24 MR. CUNNINGHAM: No further questions.

25 MR. ERMILIO: I have one question.

REXCROSS EXAMINATION

BY MR. ERMILIO:

Q Bringing you back to the mid 60's again and in the hypothetical situation Mr. Lindland was discussing, we're talking about before the computer was installed that adjusts the retarders. Is that correct?

A Uh huh.

Q In the event that a car was humped at that time and it was full of material, but the Way Bill indicated it was -- it was not full, what would -- excuse me. What would happen as it goes over the hump?

A Well, normally, if it's listed as an empty, going down that hill it's going to roll faster if it's loaded.

Q Understand we're back in the mid 60's now?

A Yeah.

Q Okay.

A And depending on whether the retarder operator was on the ball and could see that the car was going to start rolling faster, he could manually stop it.

But if it was listed as an empty and it was a load, chances are it would get up ahead of steam and take off.

Q Take off down the track?

1 A Yeah, the tracks. When they roll off the hill,
2 they go into what we call a classification yard
3 which is probably in the neighborhood of between a
4 quarter and a half mile. . I couldn't exactly say.
5 50 -- between 50 and 60 car lengths long, most of
6 the tracks; and they have leads that come out at
7 the end that go around, you know, the towers and
8 stuff there.

9 And a car could roll quite a ways if they had
10 the switches lined properly so that nothing would
11 happen. But if just -- you know, it depends on
12 circumstances. If there's anything in its way,
13 then it's going to hit it because there's no
14 stopping it once it gets past a certain point.

15 Q And if it hits another car that's in its way, we're
16 talking about that same full car and the retarder
17 was not adjusted because the Way Bill was listed as
18 the car being empty.

19 A And every once in a while, you know, I mean, it
20 happens, the car is -- is heavier than even it
21 shows on the Way Bill, you know; and the retarder
22 is set to slow it to a specific speed.

23 Well, if it's got a -- you know, 50,000 more
24 pounds in it, then it's going to roll faster than
25 it should.

1 Q And if it hits another car?

2 A It's going to -- going to knock it on the ground or
3 split it open or something, you know. It's rolling
4 fast enough to do that.

5 MR. ERMILIO: Okay, I have no other
6 questions.

7 MR. LINDLAND: I guess I just have one
8 follow-up question to his.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. LINDLAND:

11 Q He was talking about the mid 60's, and you
12 mentioned that in 19 -- 1980 there was the new
13 automatic system?

14 A About -- I would guess. Seemed to me like around
15 '86, maybe somewhere around in there.

16 Q Okay. So between 1976 and '86 it was basically the
17 same system as the mid 60's?

18 A Yeah, from -- from the time I started working there
19 in '58 until they put in this -- this computer
20 operated system, the retarders were all manually
21 operated.

22 Q Okay. So, from the time you started until 1986 it
23 was manually operated?

24 A Uh huh.

25 MR. LINDLAND: I have no further

1 questions.

2 MR. CUNNINGHAM: One more.

3 FURTHER RECROSS EXAMINATION

4 BY MR. CUNNINGHAM:

5 Q The quantity of materials that are acknowledged as
6 being lost or leaked, is there -- is there a fair
7 amount of care by your division or your people in
8 your job responsibilities in -- in quantifying
9 those kind of losses?

10 A No.

11 Q It isn't a significant thing to you?

12 I mean, does the Claim Department interact
13 with you or your department on saying, "Look, the
14 shipper says he lost this amount of material. Can
15 you verify that?"

16 A We wouldn't have any way of -- probably the only
17 contact we would have would be, say, we deliver a
18 car to the shipper and half of that load is
19 missing.

20 Q Yes.

21 A He calls our office to complain, and we have a
22 damage prevention guy that -- you know, he'll go
23 out and look at the car and say, "Yeah, half the
24 car is missing." And then he knows as far as the
25 Claim Department, you know.

1 But that would be probably our only contact
2 in that way.

3 Q But, I mean, where there has been a spill, then
4 there is an attempt, as I understand it, on the
5 part of your division to make some kind of record
6 of that. Isn't that right?

7 A Yeah, if the -- if the car, like, is -- if it's
8 been in a derailment, normally they'll notify us;
9 and we'll show -- we have a status that we have to
10 input into the computer that shows it's derailed.

11 If the car is bad enough damaged that the
12 load has to be transferred to another car, then
13 we'd document that also.

14 Q And how would that be documented in the late 60's?

15 A We would make what they call a Transfer Way Bill
16 just -- you know, we'd show it from one car to the
17 other. Usually we typed them out by hand then, and
18 the record probably would be kept for, I would
19 guess, three years at the most probably.

20 Q And the days you were talking about this, did also
21 a copy go to Philadelphia, Penn Central's office
22 there?

23 A They normally had a centralized file on -- on most
24 stuff like that, yeah.

25 Q What kind of a file was it called; do you know?

1 A Well, I don't remember when they started putting
2 stuff on microfilm; and before that they had a lot
3 of the records on magnetic tape.

4 But any car, if I remember correctly, that
5 was involved in a derailment or such like that,
6 they kept records with the Car Department, and I
7 couldn't say how long they -- they keep their
8 records; but I would assume it wouldn't be much
9 longer than, you know, we keep ours.

10 Q Okay. But any loss was recorded, so -- so as to --
11 to enable the company to be able to verify what, at
12 least, you thought it was at the time, right?

13 A Uh huh.

14 MR. CUNNINGHAM: Okay, that's all the
15 questions I have.

16 MR. LINDLAND: I have one more question.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. LINDLAND:

19 Q You mentioned earlier that in roughly between the
20 time you started in 1986 that the cars were
21 retarded manually?

22 A Uh huh.

23 Q And I realize that this is a hypothetical.

24 If a person who is responsible for retarding
25 the cars made a mistake and either misread the Way

1 Bill or somehow didn't retard the car properly,
2 what would be the repercussions of doing that?

3 MR. ERMILIO: Kurt, what do you mean by
4 repercussions?

5 BY MR. LINDLAND:

6 Q In other words, would that person be fired if there
7 was an accident caused by that?

8 A Well, I would guess it would have to depend on the
9 seriousness of it. You know, I mean, nobody's
10 perfect when it comes to that.

11 I mean, the guys that used to work those
12 retarder jobs, you know, didn't particularly like
13 them for that reason; and you get malfunctions in
14 anything. They get them with this computer, just
15 not as much, but quite -- quite a lot. You know,
16 those retarders and those electric switch and
17 everything malfunction. I mean, it's --

18 Q So guys didn't like that position because of the
19 responsibility associated with it?

20 A Well, more or less, yeah. I'd say that's the
21 reason.

22 MR. LINDLAND: Okay. That's it.

23 MR. CUNNINGHAM: Nothing further.

24 MR. ERMILIO: All set. Thank you.

25 MR. LINDLAND: Thank you.

1 MR. CUNNINGHAM: Thank you.

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Frank Lenox

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SUBSCRIBED AND SWORN to before
me this _____ day of _____,
A.D., 1993.

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Notary Public, State of Indiana
County of Residence:
My Commission Expires:

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CERTIFICATE

I, Teresa L. Gemmel, Notary Public in and for the County of St. Joseph and State of Indiana, duly authorized to administer oaths, do hereby certify there appeared before me at the said time and place, Frank Lenox, who was first duly sworn by me to testify the truth and nothing but the truth in response to questions propounded at the taking of the foregoing deposition.

I further certify that I then and there reported in machine shorthand the proceedings at said time and place; that the proceedings were then reduced to typewriting from my original shorthand notes; and that the foregoing typewritten transcript is a true and accurate record thereof.

I further certify that the deposition was read and signed by the deponent in the presence of a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this _____ day of _____, A.D., 1993.

Teresa L. Gemmel
Notary Public, State of Indiana
Residence: St. Joseph County
My Commission Expires 12-3-93